Supreme Court, U.S.
FILED
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E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 106

ALABAMA POWER COMPANY, ET AL., *Appellants,*

v.

UNITED STATES OF AMERICA, ET AL., *Appellees.*

On Appeal From the United States District Court for the District of Columbia

PETITION FOR REHEARING

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Appellants respectfully move this Court for an order: (1) vacating its affirmance, by an equally divided Court, of the judgment of the court below; and, (2) either directing reargument or reversing the aforesaid judgment without reargument. The grounds for this motion are as follows:

The issue in this case is whether orders of the Interstate Commerce Commission authorizing nationwide increases in freight rates are subject to judicial review. This is an issue of tremendous importance to users of

rail service as well as to their customers and the general public which must ultimately pay such increases.

By an equally divided vote, the Honorable Justice Douglas not participating, a lower Court decision has been affirmed which holds that such an order is not subject to judicial review.

We earnestly hope that this issue can now be considered and decided by the entire Court and thus settled one way or the other. See *Ladner* v. *United States*, 355 U.S. 282, 356 U.S. 969, 358 U.S. 169; *Bartkus* v. *Illinois*, 355 U.S. 281, 356 U.S. 969, 359 U.S. 121. To this end we ask that the affirmance of the court below be vacated and a rehearing granted.

Respectfully submitted,

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CERTIFICATE

As Counsel for Appellants, I hereby certify that this Petition for Rehearing is presented in good faith and not for delay.

CHARLES J. McCARTHY